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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057941
Party	Plaintiff Clockwork IP, LLC
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Signature	/Brad R. Newberg/
Date	08/18/2015
Attachments	Clockwork - Mot. to Strike.pdf(39787 bytes) Clockwork - Newberg Decl. in Supp. Mot. to Strike.pdf(1741520 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLOCKWORK IP, LLC)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92057941
)	Reg. No. 3,618,331
BARNABY HEATING & AIR, and)	
McAFEE HEATING AND AIR)	
CONDITIONING CO., INC.)	
)	
Respondents.)	

PETITIONER CLOCKWORK IP, LLC’S MOTION TO STRIKE

Petitioner Clockwork IP, LLC (“Clockwork”), by counsel, hereby moves to strike the Supplemental Declaration of Charles Barnaby (the “Supplemental Declaration”) and accompanying exhibits (the “Exhibits”), filed in connection with Respondent Barnaby Heating & Air’s (“Barnaby”) Reply to Petitioner’s Opposition to Respondent’s Cross-Motion for Summary Judgment (the “Reply”), as well as the portions of the Reply relying on the Supplemental Declaration and Exhibits, and states the following in support of its motion:

ARGUMENT

On August 10, 2015, Barnaby filed its reply in support of its cross-motion for summary judgment (the “Reply”), addressing *only one of the previous seven defenses* on which it had originally sought judgment as a matter of law and not addressing Clockwork’s responses and legal arguments on any of the others. (*See generally* [Dkt. # 36] Resp’t Reply in Supp. of Cross-Mot. for Summ. J. (“Resp’t Cross-SJ Reply”).) Purportedly in support of the Reply, Barnaby also filed the Supplemental Declaration of Charles Barnaby (the “Supplemental Declaration”) and accompanying exhibits (the “Exhibits”). (*See* [Dkt. # 36] Suppl. Decl. of Charles Barnaby

(“Barnaby Suppl. Decl.”); [Dkt. # 36] Exs. to Barnaby Suppl. Decl. (“Exs.”).) For at least the reasons set forth below, the Supplemental Declaration and Exhibits are improper and must, along with the portions of the Reply relying on the Supplemental Declaration and Exhibits, be stricken from the record.

I. Several paragraphs in the Supplemental Declaration must be stricken because they are an impermissible surreply to Clockwork’s motion for summary judgment.¹

Pending before the Board, along with Clockwork’s fully-briefed motion for sanctions based on Barnaby’s failure to comply with the Board’s Order related to discovery, are Clockwork’s motion for summary judgment on its fraud claim – which was fully briefed as of July 24, 2015 – and Barnaby’s cross-motion for summary judgment on seven of its defenses. Central to Clockwork’s motion for summary judgment is the fact that Barnaby knew of Clockwork’s superior rights to the COMFORTCLUB Mark prior to when Barnaby made each of the four fraudulent statements to the United States Patent and Trademark Office (“USPTO”) with the intent to deceive the USPTO into issuing Barnaby a registration to which Barnaby was not entitled. (*See generally* [Dkt. # 22] Pet’r Mem. in Supp. of Mot. for Summ. J. (“Pet. SJ Mem.”); *see also* [Dkt. # 32] Pet’r Reply in Supp. of Pet. Mot. for Summ. J. (“Pet. SJ Reply”).) Barnaby *did not contest – and therefore conceded – that knowledge* in its brief in opposition to Clockwork’s motion for summary judgment. (*See* [Dkt. # 30] Resp’t Opp’n to Pet’r Mot. for Summ. J. (“Resp’t SJ Opp.”); *see also infra* Section II.)

Conversely, however, Barnaby’s knowledge of the falsity of its statements to the USPTO was not at issue at all in Barnaby’s opening brief in support of its cross-motion for summary

¹ Barnaby does not appear to rely on the Exhibits to claim it lacked knowledge of Clockwork’s superior rights in COMFORTCLUB, but to the extent that it does, Clockwork respectfully requests that the Board strike the Exhibits on the ground that they also constitute an improper surreply.

judgment, and Clockwork did not put it at issue in its opposition to Barnaby's cross-motion. ([Dkt. # 30] Resp't Mem. in Supp. of Cross-Mot. for Summ. J. ("Resp't Cross-SJ Mem."); [Dkt. # 34] Pet'r Opp'n to Resp't Cross-SJ Mot. ("Pet. Cross-SJ Opp.")). In fact, although Barnaby moved for summary judgment on its "no liability for fraud" defense, it made no arguments and cited no legal authority in support of that defense, perhaps relying instead on its opposition to Clockwork's motion for summary judgment, in which Barnaby also failed to dispute Barnaby's knowledge. ([Dkt. # 30] Resp't Cross-SJ Mem.; *see also* [Dkt. # 30] Resp't SJ Opp.)

Yet, despite the issue of Barnaby's knowledge having no relevance whatsoever to its cross-motion, Barnaby included 10 paragraphs in the Supplemental Declaration attached to the Reply in support of its cross-motion – which is over a third of the substantive paragraphs – that, for the very first time, deny Barnaby's knowledge of Clockwork's superior rights in the COMFORTCLUB Mark. ([Dkt. # 36] Barnaby Suppl. Decl. ¶¶ 2, 3, 4, 5, 18, 19, 24, 26, 28, 29.) Barnaby does not cite to a single 1 of those 10 paragraphs in the Reply to claim a lack of knowledge. ([Dkt. # 36] Resp't Cross-SJ Reply.) This is unsurprising given that the entire Reply is devoted to Barnaby's "forum-selection clause" defense, and its knowledge of Clockwork's superior rights has no bearing on that issue. (*See generally id.*) Thus, those 10 paragraphs are irrelevant to the cross-motion for summary judgment, which is at least one reason for the Board to not only ignore them, but strike them entirely.

As importantly, a review of the pending motions in this case reveals that Barnaby is not simply raising irrelevant information, but is instead attempting to use the Supplemental Declaration to make an end-run around the Board's prohibition on surreplies. On July 24, 2015, Clockwork filed a reply brief in support of its motion for summary judgment. In that reply brief, Clockwork highlights that Barnaby failed to address – and therefore conceded – among other

things, Barnaby's knowledge of Clockwork's superior rights in COMFORTCLUB. (*See* [Dkt. # 32] Pet. SJ Reply at 6 ("Barnaby also does not contest, and therefore concedes, that the Barnaby Statements are false and that Barnaby knew they were false both times it made them."); *id.* at 7 (noting that "by honing in on the March 2008 conference, Barnaby ignores – and again concedes – the following points that demonstrate its knowledge of Clockwork's superior rights at the time it made the Barnaby Statements in March 2008 and/or August 2008," including but not limited to that, "in 2007, Barnaby was surrounded by seven (7) Clockwork franchisees that were using the COMFORTCLUB Mark in connection with heating and air conditioning services").)

Viewing the 10 completely irrelevant paragraphs in conjunction with Clockwork's statements in its reply brief leads to one inescapable conclusion: paragraphs 2, 3, 4, 5, 18, 19, 24, 26, 28, and 29 of the Supplemental Declaration have nothing to do with the Reply filed in support of Barnaby's own cross-motion, but instead are an improper attempt to file a surreply in response to *Clockwork's* motion for summary judgment in contravention of the rules. *See* 37 C.F.R. § 2.127(e)(1); *see also Enterprise Rent-A-Car Co. v. Advantage Rent-A-Car Inc.*, 62 U.S.P.Q.2d (BNA) 1857, 1858 (T.T.A.B. 2002) (noting that 37 C.F.R. § 2.127(e)(1) expressly prohibits surreplies and "leaves the Board with no discretion in this matter"). Paragraphs 2, 3, 4, 5, 18, 19, 24, 26, 28, and 29 of the Supplemental Declaration must therefore be stricken the record. *See QSA Toolworks, LLC v. Realnetworks, Inc.*, No. 91168414, 2007 WL 459791, at *2 (T.T.A.B. Feb. 1, 2007) (striking a declaration because, "although it was filed in response to" the motion to strike, the declaration was "clearly meant support opposer's motion for summary judgment," which was already fully briefed when the declaration was filed); *see also Guthy-Renker Corp. v. Boyd*, 88 U.S.P.Q.2d (BNA) 1701, 1702 (T.T.A.B. 2008) (striking a cross-

motion to dismiss after finding the motion was essentially a surreply and noting that “[p]arties may not couch a surreply as a new motion in order to avoid the prohibition on surreplies”).

II. The Reply, Supplemental Declaration, and Exhibits must be stricken to the extent that they contain information that Barnaby omitted and conceded in prior briefings.

Although neither point is relevant to the “forum-selection clause” defense arguments that Barnaby asserts in the Reply, the Supplemental Declaration and Exhibits are entirely devoted to contesting Barnaby’s knowledge of Clockwork’s superior rights in the COMFORTCLUB Mark as well as Barnaby’s status as a non-exclusive licensee of Clockwork’s COMFORTCLUB Mark. (*See generally* [Dkt. # 36] Barnaby Suppl. Decl.) But Barnaby has already conceded both its knowledge of Clockwork’s superior rights and its status as a non-exclusive licensee, and it cannot now, at the eleventh hour, try to unring that bell.

In Clockwork’s opening brief in support of its motion for summary judgment, Clockwork demonstrated Barnaby’s fraud on the USPTO by pointing to, among other things, the following facts:

- that Barnaby was a non-exclusive licensee of Clockwork’s COMFORTCLUB Mark, ([Dkt. # 22] Pet. SJ Mem. at 3, 12; [Dkt. # 22] Faust Decl. ¶ 3);
- that from 2006 to 2008, Clockwork licensed the COMFORTCLUB Mark to at least seven (7) OHAC franchisees within close proximity to Barnaby in the State of Texas, ([Dkt. # 22] Pet. SJ Mem. at 3, 12; [Dkt. # 22] Yohn Decl. ¶¶ 8–9; [Dkt. # 22] Ex. 2 to Yohn Decl.); and
- that Barnaby knew of Clockwork’s superior rights both at the time Barnaby filed the application to register COMFORTCLUB and when it filed the August 2008 response to the office action, ([Dkt. # 22] Pet. SJ Mem. at 8, 10–13.)

After being served with Clockwork’s opening brief, Barnaby filed two briefs in which it had the opportunity to refute the above listed facts: (1) Barnaby’s brief in opposition to Clockwork’s motion for summary judgment, ([Dkt. # 30] Resp’t SJ Opp.); and (2) Barnaby’s opening brief in support of Barnaby’s cross-motion for summary judgment, ([Dkt. # 30] Resp’t Cross-SJ Mem.)

Barnaby did not contest its knowledge of Clockwork’s superior rights in COMFORTCLUB or Barnaby’s status as a non-exclusive licensee of Clockwork’s COMFORTCLUB Mark in either brief. (*See generally* [Dkt. # 30] Resp’t SJ Opp.; [Dkt. # 30] Resp’t Cross-SJ Mem.) It therefore conceded both points and waived any argument to the contrary. *Md. Elec. Indus. Health Fund v. MESCO, Inc.*, 2014 WL 853237, at *7 (D. Md. Feb. 28, 2014) (collecting cases and noting that “[b]ecause defendants do not challenge that contention, they have conceded that point”); *Hopkins v. Women’s Division, Gen. Bd. of global Ministries*, 284 F. Supp. 2d 15, 25 (D.D.C. 2003) (noting “that when a plaintiff files an opposition to a dispositive motion and addresses only certain arguments raised by the defendant, a court may treat those arguments that the plaintiff failed to address as conceded”); *In re Peace Love World, LLC*, 2015 WL 910214, at *2 (T.T.A.B. Feb. 9, 2015) (noting that the applicant failed to address the Examining Attorney’s contention, and therefore conceded that point); *In re Natco Prods. Corp.*, 2013 WL 3188887, at *2 (T.T.A.B. Jan. 31, 2013) (same); *Macalester-Groveland Community Council v. KidsPark, Inc.*, 2010 WL 1233875, at *5 (T.T.A.B. Mar. 23, 2010) (same in the context of a petition to cancel).

Now, through the Supplemental Declaration that has nothing to do with the Reply with which it was filed, Barnaby tries to reverse its prior concessions. This belated attempt again comes closely on the heels of the reply brief that Clockwork filed in support of Clockwork’s motion for summary judgment, in which Clockwork points out Barnaby’s concessions regarding Barnaby’s knowledge of Clockwork’s superior rights in COMFORTCLUB, (*see supra* at 3), and existence as a non-exclusive licensee of Clockwork’s COMFORTCLUB Mark, ([Dkt. # 32] Pet. SJ Reply at 7 (noting that, “by honing in on the March 2008 conference, Barnaby ignores – and again concedes – the following points,” including but not limited to, that, “by March 2008,

Barnaby was a non-exclusive licensee of Clockwork's COMFORTCLUB Mark").) The Supplemental Declaration, Exhibits, and the Reply (to the extent it refers to and/or relies on the Exhibits) should therefore be stricken.

III. The Reply, Supplemental Declaration, and Exhibits must also be stricken to the extent they contain information and documents Barnaby failed to produce in response to Clockwork's discovery requests.

It is well-settled that a party may not rely on information and documents in support of a motion where it refused to produce that information and documents in response to discovery requests during the discovery period. Fed. R. Civ. P. 37(c)(1); *Nutriline Int'l, Inc. v. Foti*, 2014 WL 2174327, at *3 (T.T.A.B. May 14, 2014). Here, Barnaby attached the Exhibits (Exhibits A-D) to the Supplemental Declaration; it references and provides information about the Exhibits in paragraphs 5, 7, 8, 9, 10, 11, 12, 13, and 14 of the Supplemental Declaration; and, it relies on the Exhibits and those paragraphs on at least page 3 of the Reply.

But neither the Exhibits nor the information contained in paragraphs 5, 7, 8, 9, 10, 11, 12, 13, and 14 were previously provided to Clockwork in any of Barnaby's three prior written discovery responses and/or document productions. (*See* Decl. of Brad Newberg ("Newberg Decl.") ¶¶ 2–3.) In fact, it was not until July 31, 2015, that Barnaby produced the documents now attached as the Exhibits as well as amended interrogatory responses referring vaguely to the Technical Seal of Safety License Agreement only. (*See id.*; Ex. A to Newberg Decl. (containing a true and accurate copy of Barnaby's July 31, 2015 discovery responses and production).) As Barnaby's July 31, 2015 production and amended discovery responses indicate, the Exhibits and information described in paragraphs 5, 7, 8, 9, 10, 11, 12, 13, and 14 of the Supplemental Declaration are responsive to at least Clockwork's Interrogatory Nos. 7, 22, and 23 and Requests for Production 12 and 13. (Ex. A to Newberg Decl.) Barnaby offers no explanation for why

these documents and information were not produced earlier – not even after Clockwork filed its motion to compel and its motion for sanctions based on Barnaby’s failure to comply with the Board’s Order granting the motion to compel – and any belated justification it does provide cannot excuse the delay.

To say that this production is untimely is an understatement: it comes 14 months after the close of discovery; 4 months after the Board ordered deadline compelling Barnaby to respond fully to Clockwork’s discovery requests; 2.5 months after Clockwork filed its motion for summary judgment and motion for sanctions; and 1 week after Clockwork’s final briefs on the 5 motions pending before the Board were due. Perhaps even more troubling, it comes in the wake of Barnaby’s insistence for over a year that it has produced all documents and information in response to Clockwork’s discovery requests; its refusal to supplement its April 2015 production over the last 3.5 months; and Barnaby’s accusations that Clockwork’s distrust of Barnaby’s representations regarding the completeness of its discovery responses and production is unfounded. For example – even setting aside everything that occurred from the close of discovery to Barnaby’s April 2015 Board ordered supplemental production, which is set forth more fully in Clockwork’s other pending motions – over just the last 3.5 months, Barnaby has made the following representations to the Board and Clockwork about its discovery production:

- “All of the documents responsive to outstanding discovery have been uploaded” so that Clockwork may access them, (*see* [Dkt. # 21] Ex. J to Newberg Decl. (containing an email from Barnaby’s counsel regarding Barnaby’s April 2015 document production));
- “I have not had the opportunity to go over each of the points in your [April 2015] deficiency letter with Mr. Barnaby. *However, he has assured me there are no other responsive documents and that everything has been produced,*” (*see* [Dkt. # 21] Ex. J to Newberg Decl. (emphasis added) (containing an email from Barnaby’s counsel in response to Clockwork’s April 2015 deficiency letter that Clockwork sent prior to filing the motion for discovery sanctions and entry of judgment));

- “Respondent has fully responded to Petitioner’s discovery requests . . . ,” ([Dkt. # 24] Resp’t Opp’n to Pet’r Mot. for Discovery Sanctions & Entry of J. (“Resp’t Sanctions Opp.”) at 2 (filed June 15, 2015));
- “Respondent provided the discovery requested by Petitioner even prior to the issuance of the Board’s March 11, 2015 order If responsive documents do not exist, Respondent is not required to create documents,” (*id.* at 1);
- “Imperatively, Respondent had already responded to Petitioner’s discovery requests [before the motion to compel], but because Respondent did not file a response to Petitioner’s motion to compel, the Board issued the March 11, 2015 order that amended responses be served without objections,” (*id.* at 5);
- “Respondent has fully responded to and provided responses to the discovery at issue in this case,” (*id.* at 5);
- “The Board should deny Petitioner’s motion for sanctions because[, at the time Barnaby filed its opposition to the motion for sanctions on June 15, 2015,] Respondent has served amended responses and *produced all documents in its possession*,” (*id.* at 6 (emphasis added));
- “Respondent stands by its responses to all of Petitioner’s requests,” (*id.*);
- “Sanctions are not warranted in this case, because it is clear that Respondent has complied with Petitioner’s discovery requests,” (*id.* at 9); and
- after complaining that Clockwork did not adequately confer with Barnaby before filing the motion for sanctions, “[o]ne can only conclude that this motion for sanctions was brought for the purpose of delaying the proceedings and multiplying the costs of litigation,” (*id.* at 2).

Yet, after repeatedly insisting no more responsive information or documents exist, Barnaby produced “newly located” information and documents 7 days after Clockwork’s final brief on the pending motions was due. The Board has consistently refused to allow parties to rely on after-the-fact produced documents in similar circumstances. *See, e.g., Presto Prods. Inc. v. Nice-Pak Prods., Inc.*, 9 U.S.P.Q.2d (BNA) 1895, 1896 n.5 (T.T.A.B. 1988) (striking documents submitted in support of a motion for summary judgment where the moving party had previously withheld those documents based on the attorney-client privilege, and noting that, when a party refuses “to

produce information sought in a discovery request,” it may not “thereafter rely on the information as evidence in its behalf”).

Thus, as the record shows that Barnaby failed to produce the Exhibits and the information contained in paragraphs 5, 7, 8, 9, 10, 11, 12, 13, and 14 in response to Clockwork’s discovery requests, the Exhibits, paragraphs 5, 7, 8, 9, 10, 11, 12, 13, and 14, and the portions of the Reply that rely on the Exhibits and the information contained in those paragraphs must be stricken from the record.

IV. The Supplemental Declaration must be stricken to the extent it contains statements for which Mr. Barnaby lacks personal knowledge and foundation.

It is axiomatic that a declarant can only declare facts of which he or she has personal knowledge. Fed. R. Civ. P. 56(c)(4) (noting that a “declaration used to support or oppose a motion must be based on personal knowledge . . . and show that the . . . declarant is competent to testify on the matters stated); TBMP § 528.05(b). Barnaby has repeatedly insisted in its discovery responses that “[Barnaby] has no agreements with AirTime 500” and “no agreements with [Clockwork].” *See, e.g.*, (Ex. A to Newberg Decl. (containing Barnaby’s August 2015 supplemental discovery responses and stating that “[t]here are no agreements or policies between [Barnaby] and [Clockwork]” (Interrogatory No. 7) and “[t]here are no agreements or policies between [Barnaby] and AirTime 500” (RFP No. 12)); *see also* [Dkt. # 36] Barnaby Suppl. Decl. ¶ 22.) As a result, Barnaby would have no personal knowledge of either entity’s licensing practices and/or policies.

Yet, the Supplemental Declaration is rife with conclusory statements about AirTime500’s and Clockwork’s licensing practices and policies:

- “AirTime 500 required AirTime 500 members to sign . . . licensing agreements whenever a member desired to use an AirTime 500 trademark,” ([Dkt. # 36] Barnaby Suppl. Decl. ¶ 14);

- “AirTime 500 and Clockwork Home Services, Inc. were very particular about issuing written licenses for the use of its intellectual property,” (*id.* ¶ 16);
- “Had AirTime 500 or Clockwork IP actually been using the COMFORTCLUB mark before Barnaby Heating & Air, LLC began using the COMFORTCLUB mark, AirTime 500 or Clockwork IP would have required that Barnaby Heating & Air, LLC enter into a written licensing agreement for Barnaby’s use of the COMFORTCLUB mark,” (*id.*); and
- “The fact that AirTime, nor Clockwork, required Barnaby to enter into an oral or written license for Barnaby’s use of the COMFORTCLUB mark is further evidence that neither AirTime, nor Clockwork, were using the COMFORTCLUB mark prior to Barnaby’s first use in January 2008,”(*id.* ¶ 17.)

If Barnaby’s prior discovery responses are true and it is not a licensee of Clockwork or AirTime500, then the above identified statements must be stricken as improper because Mr. Barnaby lacks personal knowledge to make them. If Barnaby actually does have this knowledge because of its arrangements with AirTime, then Barnaby has been lying to this Board over the entire course of the case. Either way, the statements should be stricken.

More importantly, even if Barnaby now finally admits that it entered into agreements and licenses with AirTime500 and Clockwork (which it did), these statements would nevertheless be improper because they are not specific to Barnaby’s experience with AirTime500 and Clockwork. Instead, they purport to identify Airtime500’s and Clockwork’s overall licensing policies and practices while also presuming to know how AirTime500 and Clockwork would act in a hypothetical situation. (*See id.* ¶¶ 14, 16, 17.) Barnaby’s personal experience hardly gives it foundation to speculate about AirTime500’s and Clockwork’s overall policies, let alone what either entity would do in all situations. Thus, as Mr. Barnaby lacks the personal knowledge required to make the above-listed statements, paragraphs 14, 16, and 17 – and any text in the Reply relying on those paragraphs – must be stricken. Fed. R. Civ. P. 56(c)(4); TBMP 528.05(b).

CONCLUSION

For the reasons stated above, Clockwork respectfully requests that the Board strike the Supplemental Declaration of Charles Barnaby and accompanying exhibits, as well as any portion of the Reply that relies on the Supplemental Declaration and/or the exhibits, and refuse to give consideration of those materials in this case.²

Respectfully submitted,

CLOCKWORK IP, LLC

Filed via ESTTA: August 18, 2015

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² Although not an independent bases upon which to strike the Supplemental Declaration, Clockwork respectfully requests that the Board give no weight to the paragraphs in the Supplemental Declaration that are legal conclusions and/or argumentative and therefore not the proper subject of a declaration, including but not limited to paragraphs 17, 27, and 30. *See Weatherford/Lamb, Inc. v. C&J Energy Servs., Inc.*, 96 U.S.P.Q.2d (BNA) 1834, 1836–37 (T.T.A.B. 2010).

CERTIFICATE OF SERVICE

On August 18, 2015, in addition to being filed and served via ESTTA, this document was sent by first class mail to the following counsel of record:

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& Air Conditioning Co., Inc.*

/Amanda L. DeFord/
Amanda L. DeFord

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLOCKWORK IP, LLC

Petitioner,

v.

**BARNABY HEATING & AIR, and
McAFEE HEATING AND AIR
CONDITIONING CO., INC.**

Respondents.

**Cancellation No. 92057941
Reg. No. 3,618,331**

DECLARATION OF BRAD R. NEWBERG

I, Brad R. Newberg, declare and state as follows:

1. I am a partner in the law firm of McGuireWoods LLP, counsel for Petitioner Clockwork IP, LLC ("Clockwork"). I make this declaration in support of Clockwork's Motion to Strike. The following facts are within my knowledge and, if called and sworn as a witness, I could and would testify competently thereto. The matters referred to in this declaration are based upon my personal knowledge, and/or when referencing documents, such documents were reviewed by me and where applicable, were obtained and compiled at my instruction by others attorneys employed by McGuireWoods LLP, and if called as a witness I could and would testify competently thereto.

2. Attached hereto as **Exhibit A** are true and accurate copies of Respondent Barnaby Heating & Air's ("Barnaby") Fourth Amended Responses to Petitioner's First Set of Interrogatories and First Supplemental Requests for Production, as well as newly produced documents. The amended responses and newly produced documents indicate that they were not mailed, and therefore not served, until July 31, 2015.

3. Barnaby's fourth amended discovery responses, attached as **Exhibit A**, contain information that Barnaby did not include in its three previous responses. Similarly, the documents

produced in connection with Barnaby's fourth amended discovery responses, also attached as **Exhibit A**, were not included in Barnaby's prior document productions.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 17th day of August 2015 at Tysons Corner, Virginia.

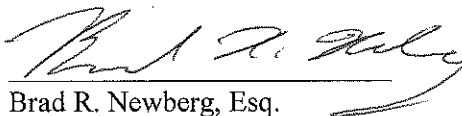

Brad R. Newberg, Esq.
McGuireWoods LLP

EXHIBIT A
to
Newberg Declaration

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. 3,618,331
Registration Date: May 12, 2009
Mark: COMFORTCLUB

Clockwork IP, LLC)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92057941
)	
BARNABY HEATING & AIR, LLC)	
)	
Respondent.)	

**RESPONDENT'S FOURTH AMENDED RESPONSES
TO PETITIONER'S FIRST SET OF INTERROGATORIES,
AND FIRST SUPPLEMENTAL REQUESTS FOR PRODUCTION**

TO: PETITIONER CLOCKWORK IP, LLC AND ITS COUNSEL OF RECORD:

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and TBMP § 403, et seq., Respondent Barnaby Heating & Air, LLC ("Barnaby") serves its FOURTH Amended Answers to Petitioner's First Set of Interrogatories Nos. 7, 22 and 23, and its Supplemental Response to Petitioner's First Requests for Production of Documents.

Respondent, in answering these interrogatories, and requests for production will afford the words contained therein their common, ordinary meaning, except as the Federal Rules of Civil Procedure may specifically define them. Respondent answers these interrogatories and requests for production in accordance with the Federal Rules of Civil Procedure, the TBMP and the Trademark Trial and Appeal Board applicable rules.

The pleadings in this matter do not indicate how the following entities are related to this litigation: "Clockwork "SGI"", "AirTime", "AirTime 500", "Success Day", "Success Academy", "CONGRESS", "SGI EXPO", "BRAND DOMINANCE", and "Senior Tech." These entities are not parties to this cancellation proceeding and without more information about each of these entities, or how they are related to Petitioner, Clockwork IP, LLC. Until Petitioner amends its pleadings in this case, or better provides an explanation of how any of the above entities relate to Petitioner, Respondent is unable to provide accurate responses to Petitioner's discovery requests about these various entities.

INTERROGATORIES

INTERROGATORY NO. 7:

Describe and list all agreements between Respondent and Petitioner, Respondent and SGI, Respondent and AirTime 500, including without limitation all Acknowledgements of Non-Solicitation Policy or Confidentiality Agreements executed by Respondent.

ANSWER: Respondent has no agreements with Petitioner. Respondent is not a licensee of Petitioner. Respondent has no agreements with SGI. Respondent has no agreements with AirTime 500. Respondent is a former member of AirTime 500 and on August 21, 2007 entered into a contract with AirTime, LLC. Respondent refers Petitioner to the August 21, 2007 contract between Respondent and AirTime, LLC previously produced. See also the Technical Seal of Safety License Agreement produced herewith. Respondent has never signed any agreements with Petitioner.

INTERROGATORY NO. 22:

Describe all facts and identify all documents and things upon which Respondent bases its denials in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

Respondent is unable to provide a narrative answer to this interrogatory and instead relies on information that is available from its business records and electronically stored records in accordance with Federal Rule of Civil Procedure 33(d). Respondent also incorporates its answers to Interrogatories Nos. 1-4, 8, and 18. In drafting Respondent's Answer, Respondent denied the facts and claims in the numbered paragraphs corresponding to Petitioner's petition for cancellation that were untrue and with which Respondent could not agree. By way of example, in Paragraph's 1-3, from Petitioner's Petition to Cancel, Petitioner alleges that it owns the trademark "COMFORT CLUB", Application No. 85/880911, filed March 20, 2013. In fact, Petitioner does not own the "COMFORT CLUB" mark and has since abandoned its U.S. Trademark application.

Petitioner also claims it owns the COMFORT CLUB mark and has been using it since 2006. Respondent denied this paragraph because it is untrue. It is untrue, because Petitioner has failed to produce any evidence that it has used the Mark since 2006. Petitioner filed an application with the U.S. Trademark Office on March 20, 2013 alleging as its filing basis an intent to use the COMFORT CLUB mark in commerce rather than actual use. Petitioner willfully made false statements knowing they were punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001. Despite such knowledge, Petitioner willfully filed a federal trademark application, filed under 15 U.S.C. Section 1051(b), asserting that it believed it was entitled to use the Mark in

commerce and that no other entity, including Respondent, had the right to use the Mark in commerce. This was a willfully false statement made by Petitioner in March 2013, just shortly before filing its Petition to Cancel.

Petitioner's Petition to Cancel contradicts basic representations made by Petitioner's attorneys' and/or agent's in the written documents and verbal discussions prior to the initiation of this cancellation proceeding.

Petitioner signed a sworn declaration before the U.S. Trademark Office, and was warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001. Petitioner also declared under oath that under 15 U.S.C. Section 1051(b), (1) it believed it was entitled to use such mark in commerce; (2) that to the best of its knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and (3) that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. Not only did Petitioner abandon its federal trademark application, but it has failed to provide any evidence it used the COMFORTCLUB Mark in commerce since 2006, and there are zero documents attached as exhibits to Petitioner's Petition to Cancel indicating any use by Clockwork IP, LLC. of the COMFORTCLUB mark as early as 2003, or from 2003 to 2008.

Respondent also bases its affirmative defenses on the timing of Petitioner's Petition for Cancellation, which was filed well over five (5) years after Respondent began using the COMFORTCLUB mark in commerce. Respondent has never owned a "One Hour Heating and Air" franchisee and never attended any meeting where "One Hour Heating and Air" marketing materials were distributed.

Respondent's date of first use of its COMFORTCLUB mark precedes the date Respondent attended an AirTime500 expo. Respondent has never done business with Petitioner. Respondent has never entered into a contract with Petitioner. Respondent is not a licensee of Petitioner's.

Respondent declines to provide a further narrative answer to this interrogatory because the interrogatory asks for information that is available from documents produced in this case, on which Respondent relies in answering this Interrogatory, and the pleadings filed in this case, and

this interrogatory is best addressed via a deposition. Fed. R. Civ. P. 33(d).

INTERROGATORY NO. 23:

Describe all facts and identify all documents and things upon which Respondent bases its Affirmative Defenses in Respondent's Answer to the Petition to Cancel in this proceeding.

ANSWER:

In reliance upon Federal Rule of Civil Procedure 33(d), Respondent declines to provide a narrative answer to this interrogatory and relies on its business and electronically stored records that were produced in this case. Fed. R. Civ. P. 33(d). Respondent relies on any and all documents produced herewith, including (1) its business records, (2) documents produced by Respondent in this case, (3) conversations Respondent has had with Petitioner's agents or employees, (4) representations made by Petitioner and its employees, (5) representations made by Petitioner's attorneys during the pendency of this matter and prior to the initiation of this matter, (6) Respondent's federal trademark application and registration materials, and (7) Respondent's memory, (8) Petitioner's federal trademark application and the corresponding file materials, (9) Petitioner's abandonment of its federal trademark registration, (10) any and all documents that Petitioner may produce in this case, or identify in its Disclosures, discovery documents, pretrial disclosures, or other materials filed in this proceeding, (11) all corporate registration and formation documents and dissolution documents, (12) all assignments on file with the U.S. Patent and Trademark Office. Respondent also relies on the Technical Seal of Safety License Agreement signed by Barnaby Heating & Air, LLC and AirTime 500, LLC. To the extent this interrogatory calls for a narrative from Respondent and to the extent Respondent has inadvertently failed to recall each and every single document, fact, or circumstance upon which it relies in defending against Petitioner's baseless claims, Respondent specifically reserves the right to supplement and amend this response.

REQUEST FOR PRODUCTION NO. 12:

All agreements and policies between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

ANSWER:

There are no agreements or policies between Respondent and Petitioner. There are no agreements or policies between Respondent and SGI. There are no agreements or policies between Respondent and AirTime 500. Subject to the foregoing, see documents previously produced and documents produced herewith.

REQUEST FOR PRODUCTION NO. 13:

All written communications between Petitioner and Respondent, Respondent and SGI, and Respondent and AirTime 500.

ANSWER:

There are no written communications between Respondent and Petitioner. For any correspondence between SGI or AirTime 500 and Respondent, see responsive documents previously produced and attached hereto.

Dated: July 31, 2015

Barnaby Heating & Air, LLC

/s/ Julie Celum Garrigue

JULIE CELUM GARRIGUE

Celum Law Firm, PLLC

11700 Preston Rd.

Suite 660, PMB 560

Dallas, Texas 75230

P: 214.334.6065

F: 214.504.2289

E: Jcelum@celumlaw.com

Attorney for Respondent, Barnaby Heating & Air, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **RESPONDENT'S FOURTH AMENDED RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES, NOS. 7, 22, AND 23, AND FIRST SUPPLEMENTAL RESPONSES TO PETITIONER'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on counsel for Petitioner and counsel for Co-Respondent, this 31st day of July 2015, by email and by sending the same via First Class Mail:

Brad R. Newberg
McGuireWoods, LLP
1750 Tysons Boulevard
Suite 1800
Tysons Corner, VA 22102-4215
T: 703.712.5061 (Direct Line)
F: 703.712.5187
Email: bnewberg@mcguirewoods.com

Counsel for Petitioner, Clockwork IP, LLC

Melissa Replogle, Esq.
Replogle Law Office, LLC
2312 Far Hills Ave., #145
Dayton, OH 45419
T: 937.369.0177
F: 937.999.3924
Email: melissa@reploglelawoffice.com

Counsel for Co-Respondent, McAfee Heating & Air Conditioning, Inc.

/s/ Julie Celum Garrigue
JULIE CELUM GARRIGUE



Service Club Membership Application

3 Regional Options

877-227-5462
www.absoline.com

Club memberships were created exclusively for AirTime 500 members to provide routine maintenance on their HVAC systems and help protect their clients from major service problems. The latest version of club membership provides multiple levels of protection to the customers with discounts and annual inspections to the homeowner. AirTime 500 members realize how beneficial these plans are when protecting the safety and welfare of their customers. Club memberships offer steady cash flow, happier team members, planned growth, and lower marketing costs. In addition, they increase the value of the business and create an excellent place to train future service technicians.

Companion piece and separate enrollment form that is used in conjunction with the Club Membership program.
8 1/2 X 11 invoice, 3-color, 2-part carbonless form.

Region (Required, please choose one)

☐ Region 1 ☐ Region 2 ☐ Region 3



Quantity	Investment	Total
<input type="checkbox"/> 1,000	\$388.00	\$
<input type="checkbox"/> 1,500	\$412.00	\$
<input type="checkbox"/> 2,000	\$435.00	\$
Set Up Fee		\$ 25.00
Shipping & Handling*		
Total		\$

*Shipping is based on UPS Ground service; price may vary depending on the destination address. Additional charges will apply for expedited service.

Please ship order to:

Company Name _____
Address _____
City, State, Zip _____
Phone _____ Fax _____
Email _____
Owner's Name _____

Payment Information:

☐ Credit Card # _____ Exp. Date _____
☐ Check is enclosed (Please make payable to Advantage Business Solutions)
Authorized Signature _____

*Refunds apply if and only when an unopened material can be restocked; this is due to the nature of exclusivity and copyright laws. Defective materials may be exchanged for the same exact material.

PLEASE FAX COMPLETED ORDER FORM TO 615-515-0024

AT5-001

Advantage Business Solutions
6213 Charlotte Avenue, Suite 100, Nashville, TN 37209

Work order # _____ Customer # _____

Name _____ Date _____

Address _____

City _____ State _____ Zip _____

Home phone _____ Work _____

E-mail address _____

Scheduled arrival _____ Actual arrival _____

SYSTEM INFORMATION Age outdoor _____ Age indoor _____

Manufacturer _____

Model # _____

Serial # _____

Condition (#1 best) 1 2 3 4 5 1 2 3 4 5

MorVent Services, Inc. Air Conditioning & Heating

503 N. Walnut Street
Kennett Square, PA 19348

(610) 444-3333

**StraightForward
Pricing™**

5 **Repair, Replace, Install:** In-warranty condenser coil, relocate condensing unit, flue, in-warranty heat exchanger, reversing valve, suction accumulator.

CLUB LEVEL

SILVER

GOLD

PLATINUM

\$890 \$712 Free Free

Qty _____ X (\$ ea): _____ = _____

4 **Repair, Replace, Install:** O.E.M. motor, O.E.M. burners, primary circuit board, in-warranty compressor, major duct repair, in-warranty evaporator coil, control valve, pump, refrigerant leak search and repair, refrigerant recovery and recharge, suction line dryer.

\$477 \$382 Free Free

Qty _____ X (\$ ea): _____ = _____

3 **Repair, Replace, Install:** Blower fan and pulleys, universal burners, secondary circuit board, universal motor, defrost control board, gas valve, heat strip, igniter, electronic thermostat, furnace rewire.

\$287 \$230 Free Free

Qty _____ X (\$ ea): _____ = _____

2 **Repair, Replace, Install:** Air balance, blower fan, breaker, clean complete A/C, clean complete furnace, condenser fan blade, contactor, disconnect box, control switch, drain pan, drain line, minor duct repair, flue repair, humidistat, relay, sequencer, shaft and bearings, start kit, timer, UV light bulb, wiring.

\$189 \$151 Free Free

Qty _____ X (\$ ea): _____ = _____

1 **Clean, Adjust:** Blower, breaker, drain, drain line, ignition components, filter, evaporator coil, fins, pilot, vent, thermostat.

\$99 \$79 Free Free

Repair, Replace, Install: Air flow switch, capacitor, drain line, filter media cartridge, flame sensor, Freon, glow coil, humidifier pad, pilot, thermocouple, standard thermostat, transformer.

Qty _____ X (\$ ea): _____ = _____

Qty _____ X (\$ ea): _____ = _____

Qty _____ X (\$ ea): _____ = _____

PAID VIA: _____ Platinum Club _____ Gold Club _____ Cash-check # _____

Diagnosis \$99 \$19.95 Free Free

_____ Visa _____ Mastercard _____ Discover _____ American Express

Total due today _____

CC# _____ Exp. _____

Cardholder & Work Satisfaction signature _____ Technician signature _____

As a trained professional, I recommend the following: _____

Work order # _____ Customer # _____
 Name _____ Date _____
 Address _____
 City _____ State _____ Zip _____
 Home phone _____ Work _____
 E-mail address _____
 Scheduled arrival _____ Actual arrival _____

Company Logo

555-555-5555

**StraightForward
Pricing™**

CLUB LEVEL

SYSTEM INFORMATION

	Outdoor	Indoor
Manufacturer	_____	_____
Model #	_____	_____
Serial #	_____	_____
Condition (1= best)	1 2 3 4 5	1 2 3 4 5

5 **Repair, Replace, Install:** In-warranty condenser coil; relocate condensing unit, flue, in-warranty heat exchanger, reversing valve, suction accumulator.

\$890 \$712 \$70 \$70

Qty _____ X (\$ ea): _____ = _____

4 **Repair, Replace, Install:** O.E.M. motor, O.E.M. burners, primary circuit board, in-warranty compressor, major duct repair, in-warranty evaporator coil, control valve, pump, refrigerant leak search and repair, refrigerant recovery and recharge, suction line dryer.

\$477 \$382 \$70 \$70

Qty _____ X (\$ ea): _____ = _____

3 **Repair, Replace, Install:** Blower fan and pulleys, universal burners, secondary circuit board, universal motor, defrost control board, gas valve, heat strip, igniter, electronic thermostat, furnace rewire.

\$287 \$230 \$70 \$70

Qty _____ X (\$ ea): _____ = _____

2 **Repair, Replace, Install:** Air balance, blower fan, breaker, clean complete A/C, clean complete furnace, condenser fan blade, contactor, disconnect box, control switch, drain pan, drain line, minor duct repair, flue repair, humidistat, relay, sequencer, shaft and bearings, start kit, timer, UV light bulb, wiring.

\$189 \$151 \$70 \$70

Qty _____ X (\$ ea): _____ = _____

1 **Clean, Adjust:** Blower, breaker, drain, drain line, ignition components, filter, evaporator coil, fins, pilot, vent, thermostat.
Repair, Replace, Install: Air flow switch, capacitor, drain line, filter media cartridge, flame sensor, Freon, glow coil, humidifier pad, pilot, thermocouple, standard thermostat, transformer.

\$99 \$79 \$70 \$70

Qty _____ X (\$ ea): _____ = _____

Qty _____ X (\$ ea): _____ = _____

Qty _____ X (\$ ea): _____ = _____

PAID VIA: _____ Combo Club _____ Insurance _____ Cash-check # _____
 _____ Visa _____ Mastercard _____ Discover _____ American Express

Diagnostic Fee: \$99

Total due today _____

CC# _____ Exp. _____

Cardholder & Work Satisfaction signature _____ Technician signature _____

As a trained professional, I recommend the following: _____

October 7, 2008

Charles Barnaby
Barnaby Heating & Air
4620 Industrial Street, Suite C
Rowlett, TX 75088



RE: Technician Seal of Safety™ Licensing Agreement Requirements

I have received notification that you have entered into a Licensing Agreement with AirTime500 for use of **Technician Seal of Safety™**. I have enclosed the original agreement for your records. In order to maintain compliance, as outlined in the License Agreement, you will need to fulfill the following two requirements and submit proof in one of the manners listed at the end of this letter:

- **Current INSURANCE:** We have received a copy of your Insurance Certificate. Please keep in mind this obligation is an ongoing task and it's your responsibility to make sure it's renewed upon expiration. It should have listed both **AirTime 500** and **Clockwork Home Services, Inc. as additional insured** on your general liability policy with a minimum limit of \$1,000,000 (see Paragraph 5.2 of License Agreement). Submit the insurance certificate once this has been added.
- **PROOF OF USE:** *Prior to* implementing the **Technician Seal of Safety™**, please submit all proofs or samples of how you intend to use the mark (see Paragraph 3.2 of License Agreement) to be sure you are using the trademark in the appropriate way.* For example, yellow page ads, invoices, letterhead, business cards, pictures of trucks, etc. If you are not immediately putting the mark into use, please let me know. Submit actual samples of use by the date specified below**. The trademark must read exactly as it was given with the correct trademark symbol. Additionally, no extra punctuation may be added, and no words may be changed, added to or deleted from the trademark.

****The following options are available for you to submit the requirements by December 10, 2008:**

E-mail: dschneider@yoursgi.com
Fax: 314-862-2314
Mail: AirTime 500
Denise Schneider
7777 Bonhomme, Suite 1800
Clayton, MO 63105

Best Wishes for Success,

Denise Schneider
Project Traffic Manager
Cc: File



TECHNICIAN SEAL OF SAFETY

License Agreement

AirTime, LLC



This License Agreement ("Agreement") is entered into as of the date indicated below, by and between AirTime, LLC, a Missouri limited liability company, dba AirTime 500 ("AirTime" or "we," "our," or "us"), and the undersigned business entity and/or individual(s) engaged in business (jointly and severally referred to as the "Member" or "you" or "your").

WHEREAS, the trademark noted below (the "Licensed Trademark") is used by AirTime under authority from Clockwork Home Services, Inc., formerly known as VenVest, Incorporated, a Delaware corporation ("Clockwork"); and

WHEREAS, AirTime has the exclusive right to license and/or sublicense the Licensed Trademark; and

WHEREAS, Member, as part of Member's membership in AirTime, desires to use the Licensed Trademark in furtherance of Member's established heating, ventilation and air conditioning contracting business (the "Licensed Business").

NOW THEREFORE, in consideration of the foregoing, the parties do agree as follows:

1. GRANT OF LICENSE, TERM

1.1 Subject to all the terms and conditions of this Agreement, AirTime grants Member a nonexclusive and limited license ("License") to use the Licensed Trademark in connection with Member's Licensed Business but only within in the geographical area stated on Member's Membership Agreement with AirTime ("Membership Agreement") and only in accordance with the other terms and conditions of this Agreement, the Membership Agreement and/or any rules, regulations or interpretations regarding this Agreement and/or the use of the License that AirTime has or may issue.

1.2 If so noted below, the License includes the right to use the Licensed Trademark, in conjunction with the name of the Licensed Business, as noted in this Agreement (or a portion of the full name to be approved in writing in advance by AirTime) must be used in conjunction with the Licensed Trademark.

1.3 Except as otherwise provided in this Agreement, the initial term of this Agreement will be twelve (12) months effective from the date of the execution of Member's AirTime Membership Agreement or the date of the execution of this Agreement (whichever agreement is executed last) and, unless otherwise terminated, automatically renews for one (1) year periods so long as Member continues to be a member of AirTime in good standing. Upon the termination of Member's AirTime membership or Member's breach of this Agreement and/or the Membership Agreement, this Agreement, the License and any rights granted hereunder to Member automatically terminate without further notice. Should the Agreement be terminated by AirTime without any breach of this Agreement and the Membership Agreement on the part of Member, Member has the option of paying a one-time fee equal to double the initial membership fee in AirTime (valued at the time of the exercise of this option by Member) to continue using the Licensed Trademark under this Agreement so long as Member (a) continues to operate the Licensed Business and (b) Member continues to follow all of the other terms and conditions of the Agreement and/or the Membership Agreement that pertain or relate to the Licensed Trademark.

2. OWNERSHIP OF RIGHTS

2.1 Member expressly recognizes and acknowledges that Clockwork exclusively owns all of the right, title and interest in and to the Licensed Trademark. Upon expiration or upon termination of this Agreement and/or the License for any reason, Member shall promptly cease all use of the Licensed Trademark and shall thereafter not use the Licensed Trademark or any related, confusing or colorable simulation of the Licensed Trademark. This Agreement and/or the License does not entitle Member to any interest in or ownership rights to the Licensed Trademark and Member does not have any right or license to use any present or future Licensed Trademark in the promotion or conduct of Member's Licensed Business except as authorized in this Agreement.

2.2 Member shall not use the Licensed Trademark for any purpose other than in connection with the Member's Licensed Business and at no time shall Member use any related, confusing or colorable simulation of the Licensed Trademark for any purpose. Member agrees not to contest or challenge Clockwork's rights to the Licensed Trademark during the term of this Agreement or thereafter. At no time will Member claim any right, title or interest in the Licensed Trademark or other mark or name that may be in any way similar to the Licensed Trademark. Member expressly recognizes that any violation of the terms of this Agreement in regard to the Licensed Trademark, any misuse of the Licensed Trademark and/or the use of any related, confusing or colorable simulation of the Licensed Trademark without AirTime's prior written consent will cause AirTime and Clockwork to suffer irreparable damage and Member agrees that preliminary and permanent injunctive and other equitable relief shall be appropriate to prevent the continuation of such conduct provided that such remedy shall not be exclusive of other legal or equitable remedies as may be available.

3. QUALITY CONTROL

3.1 Member agrees that the services and/or products offered or sold in connection with the Licensed Trademark shall at all times be of a quality consistent with the standards required of Member as a result of Member's membership in AirTime.

3.2 During the term of this Agreement, Member shall submit to AirTime for approval any materials that contain the Licensed Trademark and/or pictures of objects or other personal property that display the Licensed Trademark as actually used and/or permit AirTime to conduct unannounced inspections of Member's premises to enable AirTime to verify that the Member is complying with the standards of this Agreement.

3.3 In the event that AirTime disapproves of any materials or samples submitted or finds inspection results unacceptable pursuant to Section 3.2 and gives Member notice per Section 11, Member shall comply with such instructions as AirTime may provide and shall give satisfactory written notice of such compliance within ten (10) days of its receipt of such instructions.

4. FEES

4.1 Member agrees to pay AirTime a non-refundable, one-time license fee of \$1.00 for the granting of the License pursuant to this Agreement. Additionally, if Member requests that a logo be prepared for Member's use, then Member authorizes that the cost of same may be charged by AirTime to Member's credit card and/or bank ACH debit account on file with AirTime.

5. INDEMNIFICATION, INSURANCE AND COMPLIANCE WITH LAWS

5.1 Member shall indemnify, defend and hold harmless AirTime and Clockwork, along with any affiliates of either, and their respective directors, officers, employees, agents, licensees and their respective independent contractors, from all liability and expense, including attorneys' fees, which arise directly or indirectly from (a) any breach of this Agreement by Member, and/or (b) any claim of or actual use or misuse by Member of the Licensed Trademark, and/or (c) any claim arising out of alleged defective products installed and/or sold and/or services provided by Member and/or any failure to warn on the part of Member and/or (d) any claim of or actual negligent, willful or intentional act or omission of the Member or its directors, officers, agents, employees or independent contractors. This indemnification shall survive the term and/or termination of this Agreement.

5.2 At all times during which Member uses the Licensed Trademark it shall maintain at its own expense, an acceptable policy of liability insurance that will insure (to the extent permitted by law) against the items noted as subsections (a), (b), (c), and (d) in Section 5.1. The policy limit for such liability insurance shall be a minimum of \$1,000,000.00 per occurrence and shall name AirTime and Clockwork as additional insured parties. In addition, such liability insurance policy shall require the insurer to notify AirTime of any modification or termination of the insurance at least twenty (20) days in advance of such modification or termination. Upon request, Member shall furnish to AirTime proof of its insurance coverage.

5.3 Member represents and warrants that Member is and will continue to be during the term of this Agreement in compliance with all local, state and federal laws and regulations governing the operation of Member's Licensed Business. Upon request, Member shall furnish or demonstrate to AirTime appropriate proof of compliance with such laws or regulations.

6. INFRINGEMENTS

6.1 AirTime shall take reasonable steps, in its sole discretion, to protect against infringement of the Licensed Trademark. Member shall have no right or claim against AirTime for any alleged failure to proceed against or inability to prevent any third-party conduct regarding the Licensed Trademark or for any disability, limitation or infirmity in Clockwork's and/or AirTime's right, title and interest in the Licensed Trademark and Member's sole and exclusive remedy in that event is Member's termination of this Agreement.

7. TRADEMARK AND COPYRIGHT REGISTRATIONS

7.1 AirTime shall be responsible for all trademark registrations of any of the Licensed Trademark covered by this Agreement and copyright registrations of all advertising, promotional material and forms provided to Member for its use under this Agreement.

7.2 Member must always use its own business name in association with its use of the Licensed Trademark. Member may not incorporate the Licensed Trademark within or as part of its business name under this Agreement, if applicable. During the term of this Agreement, AirTime may offer to Member the use of additional trademarks for Member's use. Unless the subject of a separate written agreement between Member and AirTime, Member agrees that any additional trademarks granted by AirTime during the term of this Agreement are considered to be and are treated as a Licensed Trademark as defined by this Agreement and are, as such, subject to the terms and conditions of this Agreement.

8. DOMAIN NAME

8.1 AirTime will maintain ownership of the Domain Name.

9. TERMINATION

9.1 This Agreement automatically terminates if any one or more of the following occur:

- (a) Member breaches any curable provisions of this Agreement and such breach has not been fully cured in accordance with AirTime's specifications within ten (10) days after notice of breach has been given pursuant to Section 11;
- (b) Member breaches any non-curable provision of this Agreement;
- (c) Member discontinues or terminates its Licensed Business;
- (d) Member attempts to assign, sublicense or encumber this Agreement, the License, and/or any rights thereunder without AirTime's prior written approval;
- (e) Member's membership in AirTime terminates for any reason and/or at the request of either party;
- (f) Member shall become insolvent, or make any assignment for the benefit of creditors, or shall file any petition under Chapter 7, 10, 11 or 12 of Title 11, United States Code (or any similar law which might be applicable to Member or its business), or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or if any receiver is appointed for its business or property, or if any trustee in bankruptcy or insolvency shall be appointed for it.

9.2 Member may terminate this Agreement by giving AirTime sixty (60) days notice in accordance with Section 11.

10. DISPOSAL OF MATERIAL AND REMOVAL OF LICENSED TRADEMARK UPON TERMINATION OF AGREEMENT

10.1 Upon termination or expiration of this Agreement, Member shall have no further rights to use the Licensed Trademark. In addition to any other instructions given by AirTime, Member shall remove and/or obliterate the Licensed Trademark from any vehicles, uniforms, buildings, signs and/or other property of Member and shall destroy all items, such as but not limited to, forms, advertisements, business cards and the like bearing the Licensed Trademark no later than thirty (30) days of such termination or expiration of the License. Furthermore, Member agrees not to use or reprint any copyrighted material owned by AirTime and/or Clockwork that was furnished to Member for its use during the term of the Agreement and/or the Membership Agreement. Member agrees to allow AirTime or its authorized representative to inspect Member's premises to verify that Member has complied with the provisions of this Section.

10.2 If termination of this Agreement is due solely to Member's voluntary termination of its AirTime membership while it is a member in good standing, Member has the option to continue to use the Licensed Trademark for the remaining term of this Agreement (up to one year) by paying AirTime a weekly fee of \$350 and provided that Member (a) continues to operate the Licensed Business and (b) Member continues to follow all of the other terms and conditions of the Agreement and/or the Membership Agreement that pertain or relate to the Licensed Trademark. The weekly fee shall be payable by credit card or by debiting of Member's bank account and Member must provide AirTime with appropriate documentation regarding the selected payment option when Member exercises its option.

11. NOTICES

All notices to be given under this Agreement shall be given or made at the respective addresses of the parties set forth below, unless notification of a change of address is given in writing. The aforementioned shall be sent by certified mail with a return receipt requested or by overnight express delivery with signature of receipt required and shall be deemed given at the time they are sent.

12. NO JOINT VENTURE OR FRANCHISE

Nothing herein contained shall be construed to place AirTime and Member in the relationship of partners or joint venturers, principal-agent or master-servant, franchiser-franchisee and, except as expressly provided herein, neither shall have any power to obligate or bind the other in any manner whatsoever. Member further acknowledges that this Agreement is not a franchise arrangement nor will Member assert at any time that this relationship is or was a franchise.

13. NO ASSIGNMENT

This Agreement (in whole or in part) and/or any rights granted shall not be assigned, transferred (by operation of law or otherwise), sublicensed or encumbered by Member without the prior written consent of AirTime and any such unauthorized assignment, transfer, sublicense or encumbrance shall be void. AirTime may assign or transfer this Agreement or any rights hereunder to any third party without any requirement of prior notice or consent.

14. NO WAIVER, MODIFICATION, SEVERABILITY

None of the terms of this Agreement can be waived or modified except expressly in writing signed by both parties or their duly authorized agents. The failure of either party to insist on compliance with any provisions shall not constitute a waiver of such provision in the future, or of any other provision at any time. If any provision is held to be invalid or unenforceable by any court of competent jurisdiction or any other authority vested with jurisdiction, such holding shall not affect the validity or enforceability of any other provision of this Agreement.

15. MISCELLANEOUS

15.1 This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms agreed to. No course of prior dealings between the parties and no usage of the trade shall be relevant or admissible to supplement, explain or vary any of the terms to this Agreement. Acceptance of, or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objections. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth in this Agreement.

15.2 The Section and Sub-Section headings of this Agreement are for the convenience of reference only and do not form a part of this Agreement and do not in any way modify, interpret or construe the intentions of the parties.

15.3 This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflict of laws principles. Any action arising out of or relating to this Agreement will be brought by the parties only in a Missouri state court or a federal court sitting within Missouri, which will be the exclusive venue of any such action. Each party waives any objection to the laying of venue of any such action, and irrevocably consents and submits to the jurisdiction of any such designated court (and the appropriate appellate courts) in any such action. Service of process and any other notice in any such action will be effective against such party when transmitted in accordance with the notice requirements set forth above. Nothing contained herein will be deemed to affect the right of a party to serve process in any manner permitted by law. **WAIVER OF JURY TRIAL - EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.**

ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.

15.4 If either party to this Agreement breaches or attempts to breach any of the terms hereof, that party shall pay to the non-breaching party upon written demand or as part of a judgment all of the non-breaching party's costs and expenses, including reasonable attorneys' fees, incurred by the non-breaching party in enforcing the terms of this Agreement, whether or not litigation is commenced.

15.5 Following termination of this Agreement and/or the License (for any reason and/or by either party), certain terms, conditions and obligations of this Agreement and any obligations to be performed upon or following any termination of this Agreement and/or the License pursuant to any provision of this Agreement, and any miscellaneous provisions that are relevant to any such obligations, as set forth in this Agreement, will nevertheless survive and continue in full force and effect.

IN WITNESS WHEREOF, the parties have signed this Agreement as of day and year noted below.

LICENSED TRADEMARK.....

TECHNICIAN SEAL OF SAFETY

➔ DATE OF AGREEMENT: 10-2-2008

"MEMBER"	
<u>Barnaby Heating & Air, LLC</u>	
Print Full Name of Corporation or Limited Liability Company, if applicable	
<u>Charles Barnaby</u>	
Signature Of Authorized Officer of Corporation or Limited Liability Company	
<u>Charles Barnaby</u>	
Print Full Name of Authorized Officer of Corporation or Limited Liability Company	

Authorized Signature Of Owner Of Business	
Print Full Name of Authorized Signature Of Owner Of Business	

Authorized Signature Of Co-Owner Of Business	
Print Full Name of Authorized Signature Of Co-Owner Of Business	

<u>4620 Industrial 1 Street #C</u>	
Business Address	
<u>Rowlett</u>	<u>TX</u>
City	State
	<u>75088</u>
	Zip

"AirTime" AirTime, LLC
<u>[Signature]</u>
By Authorized Signature
Address: 7777 Bonhomme, Suite 1800 St. Louis, Missouri 63105 Attn: Patty Myers Phone: 877-862-8181 Facsimile: 314-862-2314

NOTE: The one-time license fee of \$1.00 per year for the granting of this license will be charged to your account on file with AirTime 500, LLC.

insurance lapses
11/5/09

ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.

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➔ DATE OF AGREEMENT: 10-2-2008

"MEMBER"	
<u>Barnaby Heating & Air, LLC</u>	
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<u>Charles Barnaby</u>	
Signature Of Authorized Officer of Corporation or Limited Liability Company	
<u>Charles Barnaby</u>	
Print Full Name of Authorized Officer of Corporation or Limited Liability Company	

_____ Authorized Signature Of Owner Of Business	
_____ Print Full Name of Authorized Signature Of Owner Of Business	

_____ Authorized Signature Of Co-Owner Of Business	
_____ Print Full Name of Authorized Signature Of Co-Owner Of Business	

<u>4620 Industrial 1 Street HC</u>	
Business Address	
<u>Rowlett</u>	<u>TX</u>
City	State
	<u>75088</u>
	Zip

"AirTime"
AirTime, LLC
By _____
Authorized Signature
Address:
7777 Bonhomme, Suite 1800
St. Louis, Missouri 63105
Attn: Patty Myers
Phone: 877-862-8181
Facsimile: 314-862-2314

NOTE: The one-time license fee of \$1.00 per year for the granting of this license will be charged to your account on file with AirTime 500, LLC.

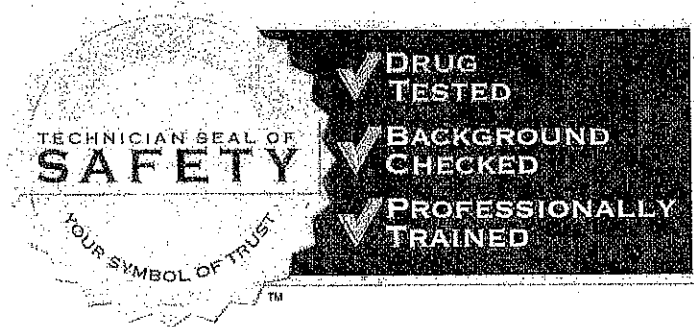
TRANSMISSION VERIFICATION REPORT

TIME : 10/02/2008 09:57
NAME : BARNABY HEATING
FAX : 9724756813
TEL : 9724120150
SER.# : 000H6J555891

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

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02
OK
STANDARD
ECM

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle



How do I obtain the Technician Seal of Safety?

To obtain the Technician Seal of Safety, you must first complete the enclosed licensing agreement. Please read it thoroughly and call if you have any questions. Fax your request to 314-727-7237.

Please Note: You must use the seal the way we have it registered. Be sure you have the "TM" next to the seal so we can continue to protect for all the members.

To obtain the artwork, you must be registered online at www.contractorwizard.com. If you have yet to register, now is the time to access the artwork! Once you have been granted access to this website and have been authorized to use the Technician Seal of Safety, you will be able to download the Technician Seal of Safety artwork and marketing materials. (Please allow 36-48 hours for processing).

If you have any questions, please call a client advisor at 800-524-1954.

Sincerely,

Patty Myers

Patty Myers



You Must be registered on www.contractorwizard.com to have access to the Technician Seal of Safety once you have been approved.

TECHNICIAN SEAL OF SAFETY

License Agreement AirTime, LLC



This License Agreement ("Agreement") is entered into as of the date indicated below, by and between AirTime, LLC, a Missouri limited liability company, dba AirTime 500 ("AirTime" or "we," "our," or "us"), and the undersigned business entity and/or individual(s) engaged in business (jointly and severally referred to as the "Member" or "you" or "your").

WHEREAS, the trademark noted below (the "Licensed Trademark") is used by AirTime under authority from Clockwork Home Services, Inc., formerly known as VenVest, Incorporated, a Delaware corporation ("Clockwork"); and

WHEREAS, AirTime has the exclusive right to license and/or sublicense the Licensed Trademark; and

WHEREAS, Member, as part of Member's membership in AirTime, desires to use the Licensed Trademark in furtherance of Member's established heating, ventilation and air conditioning contracting business (the "Licensed Business").

NOW THEREFORE, in consideration of the foregoing, the parties do agree as follows:

1. GRANT OF LICENSE, TERM

1.1 Subject to all the terms and conditions of this Agreement, AirTime grants Member a nonexclusive and limited license ("License") to use the Licensed Trademark in connection with Member's Licensed Business but only within in the geographical area stated on Member's Membership Agreement with AirTime ("Membership Agreement") and only in accordance with the other terms and conditions of this Agreement, the Membership Agreement and/or any rules, regulations or interpretations regarding this Agreement and/or the use of the License that AirTime has or may issue.

1.2 If so noted below, the License includes the right to use the Licensed Trademark, in conjunction with the name of the Licensed Business, as noted in this Agreement (or a portion of the full name to be approved in writing in advance by AirTime) must be used in conjunction with the Licensed Trademark.

1.3 Except as otherwise provided in this Agreement, the initial term of this Agreement will be twelve (12) months effective from the date of the execution of Member's AirTime Membership Agreement or the date of the execution of this Agreement (whichever agreement is executed last) and, unless otherwise terminated, automatically renews for one (1) year periods so long as Member continues to be a member of AirTime in good standing. Upon the termination of Member's AirTime membership or Member's breach of this Agreement and/or the Membership Agreement, this Agreement, the License and any rights granted hereunder to Member automatically terminate without further notice. Should the Agreement be terminated by AirTime without any breach of this Agreement and the Membership Agreement on the part of Member, Member has the option of paying a one-time fee equal to double the initial membership fee in AirTime (valued at the time of the exercise of this option by Member) to continue using the Licensed Trademark under this Agreement so long as Member (a) continues to operate the Licensed Business and (b) Member continues to follow all of the other terms and conditions of the Agreement and/or the Membership Agreement that pertain or relate to the Licensed Trademark.

2. OWNERSHIP OF RIGHTS

2.1 Member expressly recognizes and acknowledges that Clockwork exclusively owns all of the right, title and interest in and to the Licensed Trademark. Upon expiration or upon termination of this Agreement and/or the License for any reason, Member shall promptly cease all use of the Licensed Trademark and shall thereafter not use the Licensed Trademark or any related, confusing or colorable simulation of the Licensed Trademark. This Agreement and/or the License does not entitle Member to any interest in or ownership rights to the Licensed Trademark and Member does not have any right or license to use any present or future Licensed Trademark in the promotion or conduct of Member's Licensed Business except as authorized in this Agreement.

2.2 Member shall not use the Licensed Trademark for any purpose other than in connection with the Member's Licensed Business and at no time shall Member use any related, confusing or colorable simulation of the Licensed Trademark for any purpose. Member agrees not to contest or challenge Clockwork's rights to the Licensed Trademark during the term of this Agreement or thereafter. At no time will Member claim any right, title or interest in the Licensed Trademark or other mark or name that may be in any way similar to the Licensed Trademark. Member expressly recognizes that any violation of the terms of this Agreement in regard to the Licensed Trademark, any misuse of the Licensed Trademark and/or the use of any related, confusing or colorable simulation of the Licensed Trademark without AirTime's prior written consent will cause AirTime and Clockwork to suffer irreparable damage and Member agrees that preliminary and permanent injunctive and other equitable relief shall be appropriate to prevent the continuation of such conduct provided that such remedy shall not be exclusive of other legal or equitable remedies as may be available.

3. QUALITY CONTROL

3.1 Member agrees that the services and/or products offered or sold in connection with the Licensed Trademark shall at all times be of a quality consistent with the standards required of Member as a result of Member's membership in AirTime.

3.2 During the term of this Agreement, Member shall submit to AirTime for approval any materials that contain the Licensed Trademark and/or pictures of objects or other personal property that display the Licensed Trademark as actually used and/or permit AirTime to conduct unannounced inspections of Member's premises to enable AirTime to verify that the Member is complying with the standards of this Agreement.

3.3 In the event that AirTime disapproves of any materials or samples submitted or finds inspection results unacceptable pursuant to Section 3.2 and gives Member notice per Section 11, Member shall comply with such instructions as AirTime may provide and shall give satisfactory

written notice of such compliance within ten (10) days of its receipt of such instructions.

4. FEES

4.1 Member agrees to pay AirTime a non-refundable, one-time license fee of \$1.00 for the granting of the License pursuant to this Agreement. Additionally, if Member requests that a logo be prepared for Member's use, then Member authorizes that the cost of same may be charged by AirTime to Member's credit card and/or bank ACH debit account on file with AirTime.

5. INDEMNIFICATION, INSURANCE AND COMPLIANCE WITH LAWS

5.1 Member shall indemnify, defend and hold harmless AirTime and Clockwork, along with any affiliates of either, and their respective directors, officers, employees, agents, licensees and their respective independent contractors, from all liability and expense, including attorneys' fees, which arise directly or indirectly from (a) any breach of this Agreement by Member, and/or (b) any claim of or actual use or misuse by Member of the Licensed Trademark, and/or (c) any claim arising out of alleged defective products installed and/or sold and/or services provided by Member and/or any failure to warn on the part of Member and/or (d) any claim of or actual negligent, willful or intentional act or omission of the Member or its directors, officers, agents, employees or independent contractors. This indemnification shall survive the term and/or termination of this Agreement.

5.2 At all times during which Member uses the Licensed Trademark it shall maintain at its own expense, an acceptable policy of liability insurance that will insure (to the extent permitted by law) against the items noted as subsections (a), (b), (c), and (d) in Section 5.1. The policy limit for such liability insurance shall be a minimum of \$1,000,000.00 per occurrence and shall name AirTime and Clockwork as additional insured parties. In addition, such liability insurance policy shall require the insurer to notify AirTime of any modification or termination of the insurance at least twenty (20) days in advance of such modification or termination. Upon request, Member shall furnish to AirTime proof of its insurance coverage.

5.3 Member represents and warrants that Member is and will continue to be during the term of this Agreement in compliance with all local, state and federal laws and regulations governing the operation of Member's Licensed Business. Upon request, Member shall furnish or demonstrate to AirTime appropriate proof of compliance with such laws or regulations.

6. INFRINGEMENTS

6.1 AirTime shall take reasonable steps, in its sole discretion, to protect against infringement of the Licensed Trademark. Member shall have no right or claim against AirTime for any alleged failure to proceed against or inability to prevent any third-party conduct regarding the Licensed Trademark or for any disability, limitation or infirmity in Clockwork's and/or AirTime's right, title and interest in the Licensed Trademark and Member's sole and exclusive remedy in that event is Member's termination of this Agreement.

7. TRADEMARK AND COPYRIGHT REGISTRATIONS

7.1 AirTime shall be responsible for all trademark registrations of any of the Licensed Trademark covered by this Agreement and copyright registrations of all advertising, promotional material and forms provided to Member for its use under this Agreement.

7.2 Member must always use its own business name in association with its use of the Licensed Trademark. Member may not incorporate the Licensed Trademark within or as part of its business name under this Agreement, if applicable. During the term of this Agreement, AirTime may offer to Member the use of additional trademarks for Member's use. Unless the subject of a separate written agreement between Member and AirTime, Member agrees that any additional trademarks granted by AirTime during the term of this Agreement are considered to be and are treated as a Licensed Trademark as defined by this Agreement and are, as such, subject to the terms and conditions of this Agreement.

8. DOMAIN NAME

8.1 AirTime will maintain ownership of the Domain Name.

9. TERMINATION

9.1 This Agreement automatically terminates if any one or more of the following occur:

- (a) Member breaches any curable provisions of this Agreement and such breach has not been fully cured in accordance with AirTime's specifications within ten (10) days after notice of breach has been given pursuant to Section 11;
- (b) Member breaches any non-curable provision of this Agreement;
- (c) Member discontinues or terminates its Licensed Business;
- (d) Member attempts to assign, sublicense or encumber this Agreement, the License, and/or any rights thereunder without AirTime's prior written approval;
- (e) Member's membership in AirTime terminates for any reason and/or at the request of either party;
- (f) Member shall become insolvent, or make any assignment for the benefit of creditors, or shall file any petition under Chapter 7, 10, 11 or 12 of Title 11, United States Code (or any similar law which might be applicable to Member or its business), or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or if any receiver is appointed for its business or property, or if any trustee in bankruptcy or insolvency shall be appointed for it.

9.2 Member may terminate this Agreement by giving AirTime sixty (60) days notice in accordance with Section 11.

10. DISPOSAL OF MATERIAL AND REMOVAL OF LICENSED TRADEMARK UPON TERMINATION OF AGREEMENT

10.1 Upon termination or expiration of this Agreement, Member shall have no further rights to use the Licensed Trademark. In addition to any other instructions given by AirTime, Member shall remove and/or obliterate the Licensed Trademark from any vehicles, uniforms, buildings, signs and/or other property of Member and shall destroy all items, such as but not limited to, forms, advertisements, business cards and the like bearing the Licensed Trademark no later than thirty (30) days of such termination or expiration of the License. Furthermore, Member agrees not to use or reprint any copyrighted material owned by AirTime and/or Clockwork that was furnished to Member for its use during the term of the Agreement and/or the Membership Agreement. Member agrees to allow AirTime or its authorized representative to inspect Member's premises to verify that Member has complied with the provisions of this Section.

10.2 If termination of this Agreement is due solely to Member's voluntary termination of its AirTime membership while it is a member in good standing, Member has the option to continue to use the Licensed Trademark for the remaining term of this Agreement (up to one year) by paying AirTime a weekly fee of \$350 and provided that Member (a) continues to operate the Licensed Business and (b) Member continues to follow all of the other terms and conditions of the Agreement and/or the Membership Agreement that pertain or relate to the Licensed Trademark. The weekly fee shall be payable by credit card or by debiting of Member's bank account and Member must provide AirTime with appropriate documentation regarding the selected payment option when Member exercises its option.

11. NOTICES

All notices to be given under this Agreement shall be given or made at the respective addresses of the parties set forth below, unless notification of a change of address is given in writing. The aforementioned shall be sent by certified mail with a return receipt requested or by overnight express delivery with signature of receipt required and shall be deemed given at the time they are sent.

12. NO JOINT VENTURE OR FRANCHISE

Nothing herein contained shall be construed to place AirTime and Member in the relationship of partners or joint venturers, principal-agent or master-servant, franchiser-franchisee and, except as expressly provided herein, neither shall have any power to obligate or bind the other in any manner whatsoever. Member further acknowledges that this Agreement is not a franchise arrangement nor will Member assert at any time that this relationship is or was a franchise.

13. NO ASSIGNMENT

This Agreement (in whole or in part) and/or any rights granted shall not be assigned, transferred (by operation of law or otherwise), sublicensed or encumbered by Member without the prior written consent of AirTime and any such unauthorized assignment, transfer, sublicense or encumbrance shall be void. AirTime may assign or transfer this Agreement or any rights hereunder to any third party without any requirement of prior notice or consent.

14. NO WAIVER, MODIFICATION, SEVERABILITY

None of the terms of this Agreement can be waived or modified except expressly in writing signed by both parties or their duly authorized agents. The failure of either party to insist on compliance with any provisions shall not constitute a waiver of such provision in the future, or of any other provision at any time. If any provision is held to be invalid or unenforceable by any court of competent jurisdiction or any other authority vested with jurisdiction, such holding shall not affect the validity or enforceability of any other provision of this Agreement.

15. MISCELLANEOUS

15.1 This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms agreed to. No course of prior dealings between the parties and no usage of the trade shall be relevant or admissible to supplement, explain or vary any of the terms to this Agreement. Acceptance of, or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objections. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth in this Agreement.

15.2 The Section and Sub-Section headings of this Agreement are for the convenience of reference only and do not form a part of this Agreement and do not in any way modify, interpret or construe the intentions of the parties.

15.3 This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflict of laws principles. Any action arising out of or relating to this Agreement will be brought by the parties only in a Missouri state court or a federal court sitting within Missouri, which will be the exclusive venue of any such action. Each party waives any objection to the laying of venue of any such action, and irrevocably consents and submits to the jurisdiction of any such designated court (and the appropriate appellate courts) in any such action. Service of process and any other notice in any such action will be effective against such party when transmitted in accordance with the notice requirements set forth above. Nothing contained herein will be deemed to affect the right of a party to serve process in any manner permitted by law. **WAIVER OF JURY TRIAL - EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY**

ACTION INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT.

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IN WITNESS WHEREOF, the parties have signed this Agreement as of day and year noted below.

LICENSED TRADEMARK.....

TECHNICIAN SEAL OF SAFETY

➔ DATE OF AGREEMENT: _____

"MEMBER"		
_____ Print Full Name of Corporation or Limited Liability Company, if applicable		
* * * * *		
_____ Signature Of Authorized Officer of Corporation or Limited Liability Company		
_____ Print Full Name of Authorized Officer of Corporation or Limited Liability Company		
* * * * *		
_____ Authorized Signature Of Owner Of Business		
_____ Print Full Name of Authorized Signature Of Owner Of Business		
* * * * *		
_____ Authorized Signature Of Co-Owner Of Business		
_____ Print Full Name of Authorized Signature Of Co-Owner Of Business		
* * * * *		
_____ Business Address		
_____ City	_____ State	_____ Zip

"AirTime" AirTime, LLC	
By _____ Authorized Signature	
Address: 7777 Bonhomme, Suite 1800 St. Louis, Missouri 63105 Attn: Patty Myers Phone: 877-862-8181 Facsimile: 314-862-2314	

NOTE: The one-time license fee of \$1.00 per year for the granting of this license will be charged to your account on file with AirTime 500, LLC.

Faced with the fact that Clockwork is entitled to judgment as a matter of law on its fraud claim, Respondent Barnaby Heating and Air (“Barnaby”) attempts to avoid the inevitable by muddying the water and cross-moving for judgment on seven of the affirmative defenses listed in its Answer to the Petition to Cancel. (See [Dkt. # 30] Resp’t’s Cross-Mot. for Summ. J. (“Cross-Mot.”) at 2; [Dkt. # 30] Resp’t’s Mem. in Supp. of Cross-Mot. (“Resp’t Mem.”).) But although it moves for judgment based on all seven, Barnaby submits no authority, argument, or facts in support of over half of those defenses, and the facts and authority it does provide for the others, demonstrate that those defenses either fail as a matter of law or are meritless. As a result, the Board should not only deny Barnaby’s cross-motion for summary judgment, but it should preclude Barnaby from raising those defenses again if the proceeding is not otherwise resolved on Clockwork’s pending motions.